

(c) *Parts 26 and 28.* A copy of this part 28 and part 26, subpart B of this chapter, shall be included with the complaint.

(d) *Obligation to preserve documents.* Upon receipt of the complaint, the respondent is required to preserve and maintain all documents and data, including electronically stored data, within their possession or control that may relate to the allegations in the complaint. The Department shall also preserve such documents or data upon the issuance of the complaint.

[73 FR 76832, Dec. 17, 2008]

#### § 28.30 Response.

(a) The respondent may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint. The response shall be deemed to be a request for a hearing. The response must include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the penalties and assessments should be less than the amount set forth in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Failure to respond.* If no response is submitted, HUD may file a motion for default judgment in accordance with § 26.41 of this chapter.

[73 FR 76832, Dec. 17, 2008]

#### § 28.35 Statute of limitations.

The statute of limitations for commencing hearings under this part shall be tolled:

(a) If the hearing is commenced in accordance with 31 U.S.C. 3803(d)(2)(B) within 6 years after the date on which the claim or statement is made; or

(b) If the parties agree to such tolling.

[73 FR 76832, Dec. 17, 2008]

#### § 28.40 Hearings.

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in part 26, subpart B, of this chapter, governing actions in accordance with the Administrative Procedure Act.

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of civil penalties and assessments, the ALJ and, upon appeal, the Secretary or designee, shall consider and state in his or her opinion any mitigating or aggravating circumstances. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily twice the amount of the claim as alleged by the government, and a significant civil penalty, should be imposed. The amount of penalties and assessments imposed shall be based on the ALJ's and the Secretary's or designee's consideration of evidence in support of one or more of the following factors:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;

(6) The relationship of the civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;